

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5613 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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A.S.RAJGOR

Versus

STATE BANK OF SAURASTRA

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Appearance:

MR CB DASTOOR for Petitioner

MR AS VAKIL FOR MR SB VAKIL for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/06/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner challenges the order dated 11.12.1991 passed by the respondent-State Bank of Saurashtra (hereinafter referred to as the Bank) through its Regional Manager terminating the petitioner's services on the ground of unauthorised absence and on the basis of para 17 of the Bi-partite Settlement, 1989 between the management of 54 Associated Banks, as

represented by the Indian Banks Association and National Confederation of Bank Employees (herein after referred to as "the Settlement").

2 The facts leading to the filing of this petition as averred by the petitioner are as under:-

2.1 The petitioner joined service of the bank as a peon in the year 1974. In the year 1987 the petitioner was promoted as Record Keeper cum Cashier. On 4th June 1988 the petitioner was transferred from Ahmedabad to Chotila and was required to report there on or before \_\_\_\_ 1988. The petitioner did not report at Chotila and proceeded on leave from 30th June 1988 and challenged the order of transfer by filing Special Civil Application No.4378 of 1988 before this Court. The learned single judge of this Court dismissed the said SCA and the petitioner preferred LPA No.428 of 1988.

2.2 Since the petitioner did not report on duty from 1.7.1988 to 16.12.1988, the bank sent a notice dated 16.12.1988 to the petitioner under Regulation 17. Since the petitioner neither replied to nor complied with the notice, the bank passed an order on 18.1.1989 under Regulation 17 declaring that it was deemed that the petitioner had voluntarily retired from the services of the bank. The petitioner responded by his letter dated 13.2.1989 stating that the order dated 18.1.1989 was received by the petitioner on 30.1.1988 and that there appeared to be some mistake in the address. The petitioner was residing in Maninagar area whereas the notice was sent to Narayannagar and the petitioner was lucky that the letter reached the petitioner somehow. The petitioner pointed out that in view of the incorrect address, the previous notice was not served on the petitioner. The petitioner was appointed as a chowkidar and posted at Ahmedabad and thereafter he got promotion as a clerk. The petitioner would have gone and joined at the place of transfer at Chotila but, unfortunately, not only the petitioner was afflicted with tuberculosis but the petitioner's mother was also in the last stage of tuberculosis. She also sustained a fracture in her hand. The petitioner's son was also suffering from viral fever and from amongst his near relatives two elders and one close friend expired. In this set of circumstances the petitioner needed some condolences and support from his superiors and that the petitioner may not be left in the lurch. The petitioner pointed out that he had been rendering sincere services to the bank and had helped the bank in obtaining FDRs of Rs.2,42,000. The petitioner was an ex-service man and the bank may take a sympathetic

view. The petitioner had also enclosed a doctor's certificate as stated in the note below the said letter dated 13.2.1989 (Annexure-II pp 36-38).

2.3 Upon receiving the aforesaid letter the Regional Manager of the bank sent a communication dated 20.3.1989 to the petitioner stating that the petitioner will be allowed to report for duty at Chotila Branch subject to the following:-

- "1. You will withdraw the suit filed by you against the Bank, LPA before the Division Bench, which is still pending and produce satisfactory evidence of having withdrawn the case.
2. You are allowed to resume duty without prejudice to Bank's right to institute necessary disciplinary action for unauthorised absence under the relevant provisions of Award / Bipartite Settlement.
3. You will not be paid any salary and allowances for the period from 20.7.88 to the date you resume duty at Chotila.
4. You will have to pay interest @ 15% on the amount advanced to you for T.A. from the date of advance."

2.4 On 21.3.1989 the petitioner addressed letter dated 21.3.1989 (Annexure-K) to the Branch Manager of the bank at Chotila agreeing to the aforesaid four conditions. Accordingly, the petitioner was permitted to report for duty at Chotila on 21.3.1989.

2.5 Thereafter the Branch Manager of the bank at Chotila sent a letter (dated nil at Annexure-V page 41) informing the petitioner that the petitioner's oral application for leave was granted for 9 days in October 1989 and for 2 days in November 1989, however from 27.11.1989 to 11.12.1989, from 16.12.1989 to 19.12.1989 and again from 26.12.1989 onwards the petitioner had remained absent without giving any application. The petitioner further informed that there was no leave to his credit and that if the petitioner is going to produce any medical certificate it should be of a Civil Surgeon and should also be accompanied by a fitness certificate. The petitioner was further informed that if no explanation was offered for the unauthorised absence for the aforesaid period, the bank will have no other

alternative but to deduct the salary and also initiate suitable inquiry. The bank further reminded the petitioner to refund the advance LTC amount of Rs.5,000 which was taken by the petitioner on 17.5.1988. The bank again sent a telegraphic reminder (dated 5.1.1990 Annexure-C) calling upon the petitioner to report for duty. The bank again sent a notice ( Annexure-6 to the reply affidavit) to the petitioner with respect to his unauthorised absence from service and requiring the petitioner to report for duty failing which the petitioner would be deemed to have been retired from service.

2.6 On 27.1.1990 the petitioner reported for duty at Chotila and submitted the medical certificate of Dr. Anantprasad B Patel, Family Physician, certifying that the petitioner was advised rest from 24.12.1988 to 25.1.1990 as the petitioner was suffering from fever and the petitioner was fit for duty from 26.1.1990. The Regional Branch of the bank where the leave report was given by the petitioner returned the same to the petitioner for presenting it to the Branch Manager at Chotila. The petitioner reported for duty before the Branch Manager at Chotila on 31.1.1990 but the Branch Manager did not allow the petitioner to join the duty and the Branch Manager informed the Regional Manager at Rajkot accordingly vide his letter dated 31.1.1990 (Annexure-D page 13). The petitioner again reported for duty before the Branch Manager at Chotila on 29.3.1990 but the petitioner was not permitted to do so on the ground that the petitioner had not fulfilled the conditions laid down by the Regional Manager's letter dated 1.2.1990 as under:-

- "1. Submit detailed Medical report by Bank's Medical Officer at Ahmedabad. In this connection please refer our Regional Office letter No.R-II/Staff/GM/42-C dt. 21.4.90, addressed to you, and copy endorsed to Medical Officer, Z.O., Ahmedabad.
2. Deposit immediately Rs.5,000 with interest being advance taken by you from our Isanpur Ahmedabad Branch in May 88 now lying with us in Suspense A/c.
3. Submit evidence of dismissal/withdrawal of the case filed by you in the Ahmedabad High Court."

The petitioner has relied on the endorsement

dated 29.3.1990 of the Branch Manager at Chotila below the letter dated 24.3.1990 which the Branch Manager had written to the petitioner in connection with the petitioner remaining on leave without prior permission which would invite harsh disciplinary action against the petitioner (Annexure-E page 14).

2.7 According to the petitioner, the petitioner also submitted a representation dated 9-4-1990 to the Branch Manager at Chotila stating that the petitioner had reported for duty at Chotila on 31.1.1990 and again on 29.3.1990 but the petitioner was not permitted to resume the duty. According to the bank no such reply or representation was received by the bank. It is the case of the bank that thereafter on 21.4.1990 the Regional Office of the bank had sent a letter dated 21.4.1990 to the petitioner calling upon the petitioner to visit the bank's Medical Officer, Ahmedabad Zonal Office, for check-up. Thereafter on 31-7-1990 Branch Manager of the bank addressed a letter (Annexure-8 to reply affidavit, page 45) calling upon the petitioner to report for duty and also by letter dated 15.10.1990 to report for duty on 21.10.1990.

2.8 It is the case of the bank since the petitioner did not comply with the aforesaid notices, the bank had issued show-cause notice dated 27.12.1990 (Annexure-H page 18) stating that the petitioner was advised to report for duty within 30 days after fulfilling the conditions laid down as mentioned in the letter dated 31.7.1990 and that if the petitioner fails to do so, the petitioner would be deemed to have been voluntarily retired from the service on expiry of notice period. Thereafter the bank sent impugned order dated 11.2.1991 (Annexure-I page 19) to the effect that since the petitioner had absented himself from the duty unauthorisedly since 28.1.1990 and since the petitioner had failed to comply with the notice dated 21.12.1990 calling upon the petitioner to report for duty within 30 days, it was deemed that the petitioner had voluntarily retired from service on 11.2.1991. The petitioner was also called upon to pay the bank one month's notice pay and allowances in lieu of the notice.

2.9 Aggrieved by the above order, the petitioner went before the Conciliation Officer under the Industrial Disputes Act for raising an industrial dispute. However, by his letter dated 10.3.1992 the Asst. Labour Commissioner declined to refer the dispute by stating that the petitioner was not governed under the Industrial Disputes Act. Thereafter in June 1993 the petitioner

filed the present petition challenging the aforesaid termination order dated 11.2.1991 with a prayer for reinstatement with full back wages.

3 At the hearing of this petition, learned counsel for the petitioner has raised the following submissions:-

(1) The petitioner had pointed out his difficulties, the reasons for not being able to report at Chotila. In fact, the petitioner had already reported for duty at Chotila on 21.3.1989. Even during pendency of the LPA there was no complaint against the petitioner for the period from 21.3.1989 till October 1989. Thereafter also the petitioner was paid the salary for the months of November/December 1989 and therefore the respondents must be deemed to have granted the petitioner leave for the absence of a few days during the months of November (4 days) and December (21 days) of 1989. Even according to the respondents, the petitioner's absence without leave application during those three months till 31.12.1989 did not exceed 24 days. For the previous absence of 19 days in the months of October/November 1989 the petitioner had already applied orally and the said request was granted also. The petitioner had thereafter admittedly reported for duty on 27.1.1990 and the petitioner was allowed to discharge his duties. However, from 29.1.1990 onwards the petitioner was not allowed to discharge his duties although the petitioner had reported for duty which fact is clear from the endorsement made by the Branch Manager letter dated 31-1-1990 (Annexure-D page 13) and also endorsement below letter dated 29.3.1990 (Annexure-E page 14). Since the respondents were not allowing the petitioner to report for duty on the ground of alleged non compliance with the three conditions quoted herein above, the petitioner's case was not covered by paragraph 17 of the settlement. Paragraph 17 of the settlement would apply only where the employee does not report for duty. Non-fulfillment of any conditions imposed by the employer-bank management cannot justify invocation of paragraph 17 of the settlement.

(ii) A Division Bench of this Court has already held in Dena Bank v. Mahendra R Vyas 1993(2) GLR 1155 that since voluntary cessation of employment contemplated by the clause 17 (in pari materia with the clause under consideration) in some and substance stands on the same footing as removal from service, strict adherence and compliance with the said provision must be held to be mandatory before the consequences of working of the said provision could legitimately ensue. In the instant case also clause 17 of the settlement must be strictly

construed and the respondents could not have invoked the said clause as the conditions precedent for the application of the said clause were not fulfilled.

(iii) Since the petitioner had reported for duty before the Branch Manager at Chotila but said Branch Manager did not permit the petitioner to resume his duty on 31.1.1990 and again on 29.3.1990, the petitioner could not have been expected to report before the Branch Manager every day and to be denied the permission to report for duty every day. Hence, not reporting for duty pursuant to the notice dated 27th December 1990 or not giving reply to the same would not empower the bank to terminate the petitioner's services as if the petitioner had voluntarily ceased to be employee of the respondent bank.

(iv) The conditions imposed by the respondents, non-fulfillment of which resulted in the petitioner not being allowed to resume duty were arbitrary and the petitioner could not have been subjected to the clause regarding voluntary cessation of employment under para 17 of the settlement on account of non-fulfilment of any of the said conditions.

One of the of conditions was that the petitioner should produce a copy of the order of this Court permitting the withdrawal of the LPA. Since the LPA was already dismissed by the Division Bench on 22.2.1990, the respondents could have very well obtained a copy of the said order from their learned advocate appearing before this Court. In any case pendency of the LPA could not have been made a ground for not permitting the petitioner to resume duty as there was no interim or ad interim stay granted by the Division Bench of this Court in the LPA.

As far as the production of the medical certificate of the Civil Surgeon is concerned, no rule is pointed out to impose such a condition. Initially the petitioner had produced certificate of Dr B.P.Patel, family physician and surgeon, and thereafter the petitioner produced the certificate of Dr V.S.Sanghvi who is a Medical Officer, empanelled by the bank for Ahmedabad District. Dr Sanghvi had also certified that the petitioner was fit to resume to duty from 24.3.1990. Since this ceritificate was given by a doctor on the panel of the bank, the respondent could not have prevented the petitioner from resuming the duty and thereafter throwing the petitioner out of employment on the ground that the petitioner did not report for duty.

The third condition regarding return of Rs.5,000

as LTC had nothing to do with the petitioner's absence from duty on family grounds or medical grounds. The petitioner had already utilised the amount for LTC travel. Even if the respondents were entitled to recover the amount, the same could have been adjusted against the petitioner's amounts lying with the bank. Without prejudice to the rights and contentions of the petitioner, the petitioner is prepared to refund the said amount if the bank takes back the petitioner in service.

(v) In any view of the matter, the petitioner was an ex-army man. He had joined the services of the bank as a chowkidar and worked as such sincerely for 14 years. Thereafter he was promoted as a clerk and within a short time after promotion the petitioner was transferred. On account of the difficult family circumstances, (as pointed out earlier in paragraph no.2.2 of this judgement) the petitioner could not report for duty at Chotila and the petitioner's LPA challenging the decision of the learned single judge was already pending before the Division Bench of this Court. The LPA was dismissed on 22.2.1990. In the meantime, the petitioner had reported for duty from 27.1.1990 after his doctor certified him to be fit for duty after 25.1.1990. Thereafter the petitioner was not permitted to report for duty, as stated above. Hence, there was no blameworthy conduct on the part of the petitioner. The petitioner had not committed any misconduct. The respondents were therefore not justified in terminating the service of the petitioner by coming to the conclusion that the petitioner had no intention of joining the duty or that the petitioner was deemed to have voluntarily retired from the bank's service.

(vi) The learned counsel for the petitioner has also relied upon the decisions of the Apex Court in (1992) 3 SCC 359, 1993 (1) GLR 321 1994 (2) LLJ 2416 and AIR 1987 SC 111.

4 On the other hand, Mr A.S.Vakil, learned counsel appearing for the respondent-bank, has vehemently contested the petition and made the following submissions:-

(a) The petition filed in June 1993 for challenging the order passed on 11.2.1991 suffers from delay, laches and acquiescence.

(b) The petitioner had not reported for duty after receiving the notice dated 21.12.1990 nor did the

petition reply to same. The petitioner had already absented from duty for a period more than 90 days. In this view of the matter, the conditions stipulated in para 17 of the Settlement were fulfilled and thereofre the bank had the power and also justification for passing the impugned order as per para 17 of the settlement under which the petitioner was deemed to have been voluntarily retired from service.

(c) The petitioner was transferred from Ahmedabad to Chotila on 4.6.1988. The learned Single Judge of this Court had dismissed the petition challenging the said order of transfer. The Letters Patent Bench had also not granted any ad interim or interim stay but still the petitioner did not report for duty at Chotila till 20.3.1989. Even thereafter the petitioner had not reported for duty regularly and complied with all the conditions. The respondents, therefore, sent various notices to the petitioner including the notices dated 21.4.1990, 31.7.1990, 15.10.1990 and finally the notice dated 27.12.1990. Since the petitioner did not comply with the aforesaid notices, the bank was fully justified in coming to the conclusion that the petitioner had voluntarily retired from service or abandoned the service and such conclusion can also be supported on the basis of the deeming fiction contained in para 17 of the settlement.

(d) The conditions imposed by the respondents were reasonable and had a bearing on the petitioner's service with the bank. There was nothing wrong in calling upon the petitoner to produce a copy of the order showing disposal of the LPA so as to enable the authorities to pass the final orders as to how the petitioner's absence from duty should be treated. Secondly, the insistence upon the certificate of the Civil Surgeon was also justified as the petitioner was earlier suffering from tuberculosis and, therefore, the fitness certificate was required. Thirdly, since the petitioner had not fulfilled the conditions for availing the Leave Travel Concession fare the bank was justified in insisting for the refund of the LTC amount of Rs.5,000.

5 Before dealing with the contentsions urged on behalf of the petitoner and the submissions made on behalf of the bank, it is necessary to set out verbatim para 17 of the settlement as the impugned order passed by the bank is founded on the said paragraph:-

"17. Voluntary Cessation of Employment by the Employees:-

a) When an employee absents himself from work for a period of 90 or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating inter alia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or given an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules of service."

In Dena Bank v. Mahendra R Vyas reported in 34(2) GLR 1155 a Division Bench of this Court had an occasion to examine a similar clause in the settlement and this Court observed that since voluntary cessation of employment contemplated by the clause in substance and effect stands on the same footing of removal from service and in that context the significance and vigour of the said provision cannot be belittled and hence strict adherence to and compliance with the said provision must be held to be a mandate so that the consequences of the working of the provision could legitimately ensue.

An analysis of the aforesaid paragraph 17 of the Settlement, therefore, indicates that the following conditions must be strictly fulfilled before the bank can pass an order under Regulation No.17:-

1 (a) The employee absents himself for a period

of 90 or more consecutive days, and

- (b) such absence must be without submitting any application for leave or for its extension or without any leave to his credit or overstaying the leave or there is satisfactory evidence that the employee had taken up employment elsewhere, and
- (c) The management is reasonably satisfied that the employee had no intention of joining duties.

- (2) Upon fulfillment of all the aforesaid three requirements the management has to give a notice to the employee at the last known address calling upon him to report for duty within 30 days stating the grounds for coming to the conclusion that the employee had no intention of joining the duties and furnishing the necessary evidence available ;
- (3) In spite of service of the notice the employee does not report for duty within 30 days of the notice nor does the employee give an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment and he has no intention of not joining the duties.

It is only after all the aforesaid conditions are satisfied that the bank management can pass an order invoking the deeming fiction contained in paragraph 17 of the Settlement that the employee is deemed to have voluntarily retired from the service on the expiry of the said notice period.

6 In the facts of the present case, while it is true that the petitioner was physically absent from work for a period of 90 days or more consecutive days prior to issuance of the aforesaid notice dated 27.12.1990, it cannot be gainsaid that the petitioner had presented himself for duty earlier but the petitioner was prevented from resuming the duty on 31.1.1990 and again on 29.3.1990 on the ground that he had not fulfilled certain conditions. The question is whether non-fulfillment of the said conditions could give a cause of action to the bank management to invoke para 17 of the settlement. In this connection, it is necessary to refer to the following observations made by this Court in the case of

"Abandonment is a theory which cannot be naively accepted by Courts. It has got to be pleaded and further, it has got to be substantiated through acceptable and convincing evidence. Though to some extent, the theory could be advanced in the presumptive level, there must be exposure of sufficient materials, even to enable the Court to draw the presumption, without any ambiguity in mind, that it was a case of abandonment. Abandonment is total and unreserved relinquishment of employment and the facts and circumstances must bear out that the relinquishment was absolute and with actual or imputed intention to abandon employment."

Perusal of the aforesaid decision would indicate that all that para 17 of the Settlement does is to raise a rebuttable presumption that if the conditions mentioned in the paragraph exist, the employer may be justified in raising the rebuttable presumption that the employee intended to retire from service voluntarily or to abandon service. It cannot, however, be said that the employee who did not respond to the notice either through reply or compliance is precluded from pointing out the relevant facts and circumstances indicating that there was no intention on his part not to join the duties or that he did not intend to voluntarily retire from bank's service. The facts and circumstances pointed out by the petitioner and particularly the fact that the petitioner had reported for duty but was prevented from doing so on 31.1.1990 and 29.3.1990 would show that the petitioner had no such intention and that the attempts made by him to report for duty did not succeed on account of the insistence on the part of the respondents for compliance with the three conditions which could never have been made the foundation for invoking para 17 of the settlement.

7 The learned counsel for the respondent, however, strenuously relied upon the decision of the Apex Court in GUJARAT ELECTRICITY BOARD V. ATMARAM SUNGOMAL POSHANI JT 1989 (3) SC 20 and on the decision in the case of J.R.AGRAWAL (1987) Sup. SCC 336 in support of his contention that there would be no arbitrariness in the employer terminating the services of an employee who does not comply with the order of transfer or who remains unauthorisedly absent. In the case of Gujarat Electricity Board (supra) the employee transferred from

one place to another made a representation against his transfer and during pendency of the representation did not join the duty at the place of transfer. His absence from duty was held to be unauthorised. The Electricity Board, therefore, discharged the employee from service in accordance with Service Regulation No.113 which provided that the continued absence from duty or overstay, inspite of warning to return to duty, shall render the employee liable to summary discharge from service without the necessity of proceedings under the Gujarat Electricity Board (Conduct, Discipline and Appeal) Procedure. The said Regulation therefore provided for summary discharge of an employee from service without the necessity of following the procedure under Conduc, Discipline and Appeal Rules if the employee continuously absented from duty in spite of a warning. Para 17 of the settlement in the instant case however cannot be compared with the said Rule 113 of the GEB. All that paragraph 17 provides is that the employer can raise a rebuttable presumption that absence of employee from duty for 90 days prior to the date of giving the notice and for another 30 days after receiving the notice could lead to the inference that the employee did not intend to join the duty and therefore there was voluntary cessation of service. As already pointed out herein above in view of the fact that the petitioner was prevented from joining the duty on account of non-fulfillment of certain conditions which conditions did not flow from the scope of paragraph 17 of the settlement, it has to be held that the respondents were not justified in invoking the power under para 17 of the Settlement. The impugned order must fail on this ground.

8 Of course, this would not mean that the respondents are prevented from holding the departmental inquiry against the petitioner in case any ground is made out for holding any such departmental enquiry such as the non-refund of amount of Rs.5,000 for LTC purposes. The Court has not gone into that part of the allegation as it is not within the scope of the petition nor was it within the scope of para 17 of the Settlement.

9 The learned counsel for the respondent submitted that even if the petitioner had reported for duty on 31.1.1990 and 29.3.1990 the petitioner did not report for duty in spite of the notice dated 31.7.1990 and subsequent notices and that if at all the petitioner wanted to contend that on account of the previous unsuccessful attempts made by him to resume duty, the bank should not find fault with the petitioner, the petitioner was dutybound to give reply to the notice dated 31.7.1990 and subsequent notices.

In rejoinder, the learned counsel for the petitioner submitted that since the petitioner had made attempts earlier to report for duty and admittedly the petitioner was not permitted to resume duty on the ground of non-compliance of the three conditions, which could not have been imposed upon by the respondents, no useful purpose would have been served by giving reply to the notice when it was already on the record of the respondent-authorities that the petitioner had reported for duty but was not permitted to resume duty on account of non-fulfillment of the said three conditions.

It appears to the court that while technically the petitioner did not report for duty for a period of 90 days prior to the date of issuance of the notice dated 27.12.1990 and for a period of 30 days after the receiving the notice, the fact remains that the petitioner had made attempts to report for duty and it was the respondents who had prevented the petitioner from resuming duty by imposing conditions which are held to be outside the scope of para 17 of the Settlement. Under this set of circumstances, the respondents cannot be allowed to take advantage of their own wrong in not permitting the petitioner to resume the duty.

10 The learned counsel for the respondent also submitted that there has been delay on the part of the petitioner in filing the present petition. The impugned order was passed in February 1991. Thereafter the petitioner had made an attempt to raise an industrial dispute, which attempt failed in March 1992. Even thereafter the petitioner did not file any petition till June 1993. Hence, the present petition which is filed in June 1993 suffers from delay, laches and acquiescence.

It is not possible to throw out the petition on any such ground. The facts narrated by the petitioner in his representation dated 13.2.1989 (para 2.2) are eloquent. The petitioner was permitted to resume duty on 27.1.1990 but was prevented from discharging his duties from 31.1.1990 onwards. The petitioner was thus not getting any salary. The attempts made by him to raise industrial dispute also proved to be futile and that process also took more than a year's time. In this set of circumstances, the petitioner would certainly be hard pressed to make arrangements for availing legal services. In any case, the period of 1 year and 3 months after the Labour Commissioner rejected the petitioner's demand for raising the industrial dispute cannot be said to be so gross or unreasonable as to warrant dismissal of the

petition on that ground. No third party rights had intervened on account of passage of the said time. The contention of the respondents-authorities must therefore be rejected. At the highest, the Court may not award backwages till the date of filing the petition.

11 The next question is what relief should be granted to the petitioner. Since the termination order dated 11.2.1991 is found to be illegal, ordinarily the relief of reinstatement with back wages should follow. The petitioner is said to be 54 years of age with another 6 years of service to go. The learned counsel for the bank neither admits the petitioner's age nor the age of superannuation. In any view of the matter, it is not the case of the respondents that the petitioner has already attained the age of superannuation by now. Hence, there is no reason not to grant reinstatement in service with continuity of service.

12 As far as the question of back wages is concerned, in view of the fact that the petitioner has been kept away from employment for the last more than 8 years, and the petition itself has been pending for the last six years and considering the fact that the petitioner had just risen from the post of Chowkidar in Class-IV service to the post of clerk and therefore he would not be possessing the skill or wherewithal to have an alternative source of employment, the petitioner will be entitled to get full back wages from the date of filing the petition. At this stage, however, reference is required to be made to the order dated 1.3.1996 passed by this Court (Coram: Hon'ble Mr Justice M.S.Parikh, J.) which reads as under:-

"After some amount of submissions the petitioner, who is present in the Court makes following suggestion through his learned advocate:-

- (1) He is prepared to forego all his back salaries right from the time he did not work in the respondent-bank.
- (2) He will not claim any increment during the intervening period.
- (3) He will pay back to the respondent-bank Rs.5,000 with 15% interest from 1.6.1988, and
- (4) He will tender unconditional apology in writing to the bank if he is reinstated in service with continuity.

This suggestion is made by the petitioner

without prejudice to his contentions in this petition. In order that some solution is worked out on the aforesaid suggestion, it would be necessary if a responsible officer or any person authorised to take decision remains present before this Court on 11/3/1996 at 2.45 pm. S.O. to 11/3/1996 accordingly."

However, the suggestion was not accepted by the bank with the result that the petition has been required to be heard on merits. At the same time, since even while allowing the petition and passing order for reinstatement with full back wages, the Court has reserved liberty to the respondents to hold a departmental inquiry against the petitioner in respect of

any misconduct which might have been committed by the petitioner in the past, in the facts and circumstances of the case and in view of the fact that the petition is being allowed only on the ground that the impugned action of the respondents-authorities was not warranted by para 17 of the Settlement, and that the petitioner had also agreed on 1.3.1996 to forego his back wages, if the said suggestion had been accepted the petitioner would have been back in employment at least from 1.4.1996, it is directed as under:-

I The impugned order dated 11.12.1991 at Annexure-I to the petition is set aside. The respondents are directed to reinstate the petitioner in service with continuous service within a period of one month from the date of receipt of a certified copy or the writ of this Court whichever is earlier.

II The respondents shall pay the petitioner full back wages from the date of filing the petition till reinstatement. After reinstating the petitioner and after paying the full back wages, the respondents shall be at liberty to hold a departmental inquiry against the petitioner in respect of any alleged misconduct alleged to have been committed by the petitioner prior to the date of the impugned termination order which is set aside by this judgement.

III If the respondents decide not to hold any enquiry against the petitioner for any alleged misconduct in service prior to 11.2.1991 the petitioner shall not be paid back wages for the period from the date of filing of the petition till 31.3.1996

but, the respondents shall pay the petitioner back wages for the period from 1.4.1996 till the date of reinstatement. If the respondents-authorities exercise this option, the petitioner shall not be entitled to any back wages for the period from the date of filing of the petition till 31.3.1996 with a further condition that the petitioner shall pay back the bank Rs.5,000 with simple interest at the rate of 15% from 1.6.1988 till 31.3.1996 and the said amount shall be adjusted by the bank by deducting the same from the backwages payable to the petitioner for the period from 1.4.1996 till the date of reinstatement.

IV The direction for payment of backwages whether the bank decides to comply with direction II or III shall be complied with within three months from the date of receipt of the writ of this Court or a certified copy of the judgement whichever is earlier.

Rule is made absolute to the aforesaid extent with no order as to costs.

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(mohd)